IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

WP(C).No. 18328 of 2006(R)

PETITIONER:

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1. S.RAMANI,PART-TIME SWEEPER-CUM-PEON,
   HIGH COURT OF KERALA, ERNAKULAM.

2. P.D.KAVITHA, PART-TIME SWEEPER-CUM-PEON
   HIGH COURT OF KERALA, ERNAKULAM.

3. M.J.SHEEBA, PART-TIME SWEEPER-CUM-PEON,
   HIGH COURT OF KERALA,ERNAKULAM.

4. R.BINDU, PART-TIME SWEEPER-CUM-PEON,
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

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1. STATE OF KERALA,REPRESENTED BY SECRETARY
   TO GOVERNMENT, HOME DEPARTMENT,
   GOVT.SECRETARIAT, TRIVANDRUM.

2. HIGH COURT OF KERALA, REPRESENTED BY
   ITS REGISTRAR (GENERAL), ERNAKULAM.

BY ADV. SRI.KRB.KAIMAL
GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF G.O.(MS)NO.147/2005/HOME DTD. 27.5.2005 ISSUED BY THE FIRST RESPONDENT.

EAXT.P2 TRUE COPY OF ORDER NO.A3-3700/2005(2) DTD. 13.9.2005 ISSUED BY THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF JDUGMENT DTD.15.3.2004 IN W.P.(C) 27264/2003 OF THIS HON'BLE COURT.

EXT.P4 TRUE COPY OF JUDGMENT DTD.15.6.2006 IN W.P.(C) 33051/2005 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS:

EXT.R2a STATEMENT SHOWING THE PERIODS OF SERVICE OF THE PETRS. AS PART TIME SWEEPERS IN THE OFFICIAL RESIDENCES OF THE HON'BLE JUDGES.

EXAT.R2b TRUE COPY OF LETTER NO.A3-30868/2002 DTD. 17.6.2005 OF THE 2ND RESPONDENT TO THE FIRST RESPONDENT.

EXT.R2C TRUE COPY OF LETTER NO.32963/C2/2005/HOME DTD. 6.9.2005 OF THE FIRST RESPONDENT TO THE 2ND RESPDT.

EXT.R2d TRUE COPY OF LETTER NO.A3/30868/2002 DTD.29.10.2005 OF THE 2ND RESPONDENT TO THE FIRST RESPONDENT.

EXT.R2e TRUE COPY OF THE ORDER NO.G.O.(Rt)NO.177/2006/HOME DTD.21.1.2006 ISSUED BY THE FIRST RESPONDENT.

TRUE COPY

P.A.TO JUDGE

K.K.DENESAN, J

W.P.(C)NO.18328 of 2006

Dated this the 7th day of February, 2007

JUDGMENT

There are four petitioners in this writ petition. Going by the statements made in the counter affidavit of the second respondent, the first petitioner was working as Part-time Sweeper till her appointment as Sweeper-cum-Peon (full time) with effect from 9.6.2005. Other petitioners are Part Time Sweepers. The claim is for special allowance at the rate of Rs.200/= per mensum with effect from 1.11.1998. The special allowance is payable only to those performing duties in the residence of the Hon'ble Judges in the High Court of Kerala.

2. The counter affidavit filed by the second respondent furnishes the details relating to the period during which the petitioners had worked as part-time contingent employees in the residence of the respective Judges. Hence, instead of relying on the service particulars, I consider it proper to accept the service details of the petitioners as shown in Ext.R2(a). Relevant details are reproduced below for easy reference.

1. Smt.Remani

   From 1.12.1999 to 24.12.1999
   From 6.6.2001 to 29.8.2001
   From 1.10.2001 to 31.10.2001
   From 10.9.2002 to 24.3.2003
   From 18.8.2003 to 22.12.2004
   From 4.3.2005 to 8.6.2005

2. Smt.P.D.Kavitha_

   From 7.4.1999 to 12.7.1999
   From 7.9.1999 to 18.9.1999
   From 1.11.1999 to 30.11.1999
   From 1.1.2002 to 31.1.2002
   From 15.5.2002 to 1.1.2003
   From 4.2.2003 to 15.12.2003
   From 10.2.2005 to 15.3.2005

3. Smt.M.J.Sheeba

   From 9.3.1999 to 4.5.1999
   From 13.5.1999 to 1.6.1999
   From 9.7.1999 to 27.7.2000
   From 15.2.2001 to 1.10.2001
   From 15.2.2002 to 19.11.2002
   From 7.12.2002 to 9.5.2003
   From 19.5.2003 to 31.12.2003
   From 1.11.2004 to 25.4.2006

4. Smt.R.Bindu

   From 1.11.1998 to 12.11.1999

   From 1.6.2000 to 30.6.2000
   From 15.7.2000 to 23.8.2003
   From 2.2.2005 to 3.3.2005
   From 23.3.2005 to 3.8.2005

3. It is not disputed that the petitioners are eligible for the grant of special allowance at the rate of Rs.200/= per mensum for attending duty, as shown above. The only issue in dispute is about their entitlement for special allowance with effect from 1.11.1998. According to the first respondent, the allowance need be granted from the date of Ext.P1 only, that is 27.5.2005. The petitioners submit that the benefit shall be granted with retrospective effect from 1.11.1998.

4. It appears that the matter was under correspondence between respondents 1 and 2 for quite sometime. Initial correspondence was on the very question of granting special allowance to certain categories of employees including part-time contingent employees. This led to the issuance of Ext.P1. Thereafter the correspondence was directed towards the claim for the grant of special allowance from 1/11/1998. Government stuck to its stand that the categories of employees shown in Ext.P1 will be entitled for special/compensatory allowance with effect from the date of that order only and refused to give retrospective effect to that. Hence writ petitions were filed by some of the categories of the employees shown in Ext.P1. Those writ petitions were disposed of by this Court as per Exts.P3 and P4 judgments. Admittedly, Exts.P3 and P4 judgments have become final.

5. In answer to the contentions raised by the petitioners herein, the first respondent has filed counter affidavit wherein it is stated that retrospective effect cannot be given to the grant of compensatory or special allowance, as according to the first respondent, retroactivity will violate Article 49 of Kerala Financial Code Vol.1.

6. The petitioners as also the second respondent have raised contentions to establish that in cases where specific dates have been given for the grant of benefits like compensatory allowance/special allowance as stated in the proviso to the Kerala Financial Code Vol.I, the main part of that Article cannot stand in the way.

7. I do not consider it unnecessary to examine the correctness of the rival contentions centering round the interpretation of Article 49 of Kerala Financial code Vol.I, since according to me, this writ petition can be disposed of without doing that exercise.

8. Heard both sides. As rightly pointed out by the counsel for the petitioners as also the Senior Counsel appearing for the second respondent, the petitioners who belong to the lowest rung of the service cannot be treated disadvantageously than other categories of employees who are included in Ext.P1 and in whose cases this Court has passed judgments directing the government to give effect to Ext.P1 order from 1.11.1998. Denial of similar benefits to the Part

Time Sweepers will be plainly discriminatory and violation of their fundamental rights under Articles 14 and 16 of Constitution of India. I find merit in the above submissions made by the learned counsel.

9. It is necessary in the interest of justice to hold that the petitioners shall be treated atleast in the same manner as those belonging to the higher categories of employees mentioned in Ext.P1 and to whom the benefit has been granted with retrospective effect. The writ petition, is therefore, allowed. There shall be a declaration that the petitioners are entitled for the grant of special allowance of Rs.200/= per month with effect from 1.11.1998 or such other periods as are mentioned in Ext.R2(a). There shall be a direction that benefits arising consequent on the above finding shall be made available to the petitioners, as expeditiously as possible, in any event, within three months from the date of receipt of a copy of the judgment.

K.K.DENESAN, JUDGE

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